HO SEK KONG

v.

PP

COURT OF APPEAL, PUTRAJAYA
SURIYADI HALIM OMAR JCA
HASAN LAH JCA
AHMAD MAAROP JCA
[CRIMINAL APPEAL NO: W-05-98-2005]
8 OCTOBER 2010

CRIMINAL LAW: *Penal Code - Section 300 - Murder - Appeal against conviction and death sentence - Conviction secured substantially on evidence of prosecution witness - Whether trial judge erred in convicting appellant - Penal Code, s. 302*

EVIDENCE: *Witness - Credibility - Murder conviction secured substantially on evidence of prosecution witness - Witness was earlier arrested as suspect and remanded 14 days before release - Witness also failed to report crime and withheld identity of perpetrator when arrested - Whether credibility of witness impeached - Whether conviction by trial judge safe - Penal Code, ss. 300, 302*

EVIDENCE: *Statement - Statement made by accused to witness - Accused admitting to committing murder - Whether voluntarily made - Whether trial court convinced of its truth - Whether trial judge rightfully held statement as confession under s. 17(2) Evidence Act 1950 - Penal Code, ss. 300, 302*

CRIMINAL LAW: *Penal Code - Section 300 - Murder - Intention - Whether intention proved based on testimony of forensic pathologist and on number of wounds found on deceased's body - Penal Code, ss. 300, 302*

This was the appellant's appeal against his conviction and death sentence for the offence of the murder of his mother ('deceased'). The prosecution case rested substantially on the evidence of prosecution witness SP4. There was also the evidence of SP3 whose evidence was only part of the circumstantial evidence against the appellant.

A The deceased had lived with the appellant, SP3 (her daughter), SP4 (her daughter's boyfriend) and others (who had no connection with the case herein). SP4 had stayed occasionally at the deceased's house and had the keys to the house. SP4 testified that on that fateful evening of the murder, he had gone to the B deceased's house and had found the deceased lying in a pool of blood on the bedroom floor of the house. There was also blood splattered on the walls. The appellant who was in the house and coming out of the toilet just then, clad only in a towel, was said to have calmed SP4 and had confessed that he had unintentionally C committed the murder. He also told SP4 not to tell SP3 (the appellant's sister) or anyone else about what had happened before SP4 had left the house. SP4 testified that SP3 had been in a state of panic when he had fetched her from her workplace soon after and that she had informed him that the appellant had called D her stating that the deceased was covered with a lot of blood. Both of them had then immediately departed to the deceased's house whereupon a crowd of people had already gathered. As for SP3, she testified that at 5pm that fateful day the appellant had informed her that the deceased was sleeping when she had called E home inquiring about the deceased's whereabouts. She had called again later at 7pm and was informed by the appellant that the deceased had vomited a lot of blood and to return home immediately. The forensic pathologist (SP9) found a total of 55 wounds on the deceased's body and certified the cause of death F as head injury due to multiple blunt traumas.

SP4 was initially arrested as a suspect in the case only to be released later to be the prime prosecution witness. The appellant in his defence denied killing the deceased and attempted to G indirectly implicate SP4 in the murder. Nonetheless, the trial judge found SP4 to be a credible witness although he had admitted that he had previously lied to the police so as to protect the appellant who was his friend and that he was clueless as to what to do at the material time. SP4, however, was not cross-examined on what H specifically was his lie to the police. It followed that the trial judge convicted and sentenced the appellant to death which led to the appeal herein.

In the appeal, the appellant's counsel questioned the credibility of I SP4 as he had been a suspect in the case and had been remanded for 14 days. It was also contended that SP4 had lied to the police and was an interested witness.

Held (dismissing the appeal; affirming the conviction and sentence)

Per Ahmad Maarop JCA delivering the judgment of the court:

(1) The evidence of a witness read as a whole must appear to have a ring of truth. Once that impression was formed, the court must scrutinise the evidence, keeping in view the deficiencies, drawbacks and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it was against the general tenor of the evidence given by the witnesses and whether the earlier evaluation of the evidence was shaken so as to render it unworthy of belief (*State of UP v. M K Anthony*, refd). (para 7)

(2) The real tests for either accepting or rejecting the evidence of a witness were how consistent the story was with itself, how it stood the test of cross-examination and how far it fitted in with the rest of the evidence and the circumstances of the case. In the present case, such approach and tests were applied by the trial judge in evaluating SP4's evidence. The trial judge found SP4 to be a credible witness upon a maximum evaluation of his evidence. SP4's evidence about the events on the evening in question was accepted by him as the truth in spite of his admission of having previously lied to the police. The view of the trial judge on the credibility of SP4 must be given proper weight and consideration. The true or false note was generally more audible to the judge who heard and saw the witnesses than to the appellate court reading from the appeal record. (paras 7, 9 & 10)

(3) It was not unnatural for someone who witnessed a crime not to report it to the authority and withhold the identity of the perpetrator. SP4 was not "someone who had witnessed" the murder. His evidence was that the appellant made a certain statement to him (which the trial court held to be a confession). There were also no set rules of natural reaction. The reaction and behaviour of a person in a particular situation can never be predicted. Every person who witnesses a serious crime reacts in his own way (*State of Uttar Pradesh v. Devendra Singh*, refd). (para 10)

(4) Although SP4 did not witness the killing of the deceased, his testimony of what he saw when he arrived at the house, what the appellant told him when he met the appellant at the house and the appellant's conduct provided the trial judge with the crucial evidence necessary in the determination of who caused the deceased's death. The answer to the question of whether the deceased's death was caused by the appellant lay in SP4's evidence. (para 12)

(5) The appellant's statement to SP4 that he did commit the murder but had no intention of doing it was a very important piece of evidence in the case and was pivotal in the determination of the guilt or innocence of the appellant. The trial judge accepted that evidence upon careful consideration and held that the statement made suggested an inference that the appellant had committed the offence. The trial judge also had found the statement to have been voluntarily made and was convinced of its truth. Hence, the trial judge rightly admitted the statement as a confession. Once the court was satisfied that the confession was voluntarily made and that it was true, the accused could be convicted solely on the strength of his confession. In the present case, there was also corroboration in the form of circumstantial evidence. Undoubtedly, the appellant caused the death of the deceased. (paras 14-18)

(6) The trial judge found that there was intention to commit the murder by the appellant based on the testimony of SP9 and based on the wounds found on the deceased. The trial judge rightfully held that the prosecution had proved a *prima facie* case against the appellant. (para 19 & 20)

(7) The trial judge found that the appellant's evidence in denying his involvement in the murder and in implicating SP4 as an afterthought. The trial judge had properly taken into consideration the prosecution's burden of proving the appellant's guilt beyond reasonable doubt and the appellant's burden to only raise a reasonable doubt in the prosecution case for an acquittal. Having found that the appellant had failed to do so, the trial judge rightfully charged and convicted the appellant. (para 22)

Bahasa Malaysia *Translation Of Headnotes*

Ini adalah rayuan perayu terhadap sabitan dan hukuman mati bagi kesalahan membunuh ibunya ('si mati'). Kes pendakwaan bergantung pada matannya atas keterangan saksi pendakwaan SP4. Terdapat juga keterangan SP3 yang hanya merupakan sebahagian daripada keterangan ikut keadaan.

Si mati telah menetap di rumahnya bersama perayu, SP3 (anak perempuannya) dan SP4 (teman lelaki anak perempuannya itu) dengan yang lain (yang tidak berkaitan dalam kes ini). SP4 tinggal sekali-sekala sahaja dan memegang kunci rumah tersebut. SP4 dalam keterangannya mendakwa bahawa pada sebelah petang hari pembunuhan tersebut, dia telah pergi ke rumah si mati dan mendapati si mati berlumuran darah terbaring atas lantai bilik tidur rumah tersebut. Dia juga nampak percikan darah di dinding bilik tersebut. Perayu berada di rumah pada masa itu kerana dia keluar dari dalam tandas rumah pada waktu material dengan hanya berpakaian sehelai tuala. Dia di katakan menenangkan SP4 dan mengakui membunuh si mati dengan tidak sengaja. Dia juga memberitahu SP4 supaya jangan memberitahu adiknya SP3 mengenai kejadian tersebut sebelum SP4 meninggalkan rumah si mati pada hari itu. SP4 mendakwa bahawa dia mendapati SP3 dalam keadaan cemas apabila dia menjemput SP3 dari tempat kerjanya dan bahawa SP3 telah memberitahunya bahawa perayu telah memanggilnya mengatakan yang si mati berlumuran darah. Seterusnya mereka berlepas ke rumah si mati dengan segera di mana ramai orang sudah pun berkumpul di sana. SP3 pula dalam keterangan mendakwa bahawa pada jam pukul 5 petang hari malang tersebut, perayu memberitahunya bahawa si mati tertidur apabila SP3 memanggil rumah menanyakan di mana si mati berada. SP3 memanggil rumah sekali lagi pada pukul 7 petang di mana perayu menyuruhnya pulang ke rumah dengan segera kerana si mati telah memuntahkan banyak darah. Dalam pemeriksaan post-mortem, ahli kaji forensik (SP9) mendapati sejumlah 55 kecederaan atas badan si mati dan mengesahkan bahawa kematian si mati di sebabkan kecederaan kepada kepalanya yang berpunca daripada trauma kepala pukulan.

Pada mulanya SP4 ditangkap sebagai suspek kes tetapi dibebaskan kemudiannya dan menjadi saksi pendakwaan yang utama. Perayu pula menafikan melakukan pembunuhan si mati dan cuba mengimplikasikan SP4 secara tidak langsung dalam pembunuhan

A tersebut. Hakim bicara mendapati SP4 sebagai saksi boleh percaya walaupun SP4 telah mengaku berbohong sebelum itu kepada polis semasa ditangkap atas alasan melindungi perayu yang merupakan kawannya dan kerana dia tak tentu arah pada masa material. SP4 tidak diperiksa balas khususnya atas apa yang dibohongkannya itu. B Hakim bicara kemudiannya mensabitkan dan menjatuhkan hukuman mati ke atas perayu yang membawa kepada rayuan ini.

Dalam rayuan ini, kaunsel perayu mempersoalkan kebolehpercayaan SP4 kerana SP4 di katakan merupakan suspek kes sebelum ini dan C telah ditahan polis selama 14 hari sebelum dibebaskan. Juga dihujahkan bahawa SP4 telah berbohong kepada polis dan merupakan saksi kepentingan.

Diputuskan (menolak rayuan; mengesahkan sabitan dan hukuman)

D **Oleh Ahmad Maarop HMR menyampaikan penghakiman mahkamah:**

(1) Keterangan seseorang saksi apabila dibaca keseluruhannya mesti menunjukkan kemungkinan mengandungi kebenaran. E Apabila gambaran tersebut telah diberikan, mahkamah mesti meneliti keterangan tersebut dengan mengambilkira kekurangan-kekurangan, kelemahan-kelemahan dan keuzuran-keuzuran yang ditonjolkan dalam keterangan tersebut secara keseluruhan. Mahkamah juga mesti membuat penilaian untuk mengetahui F sama ada ianya bertentangan secara am dengan keterangan saksi-saksi dan sama ada penilaian sebelum keterangan itu diganggu untuk ianya tidak boleh dipercayai.

(2) Ujian sebenar menerima atau menolak keterangan seseorang G saksi adalah sama ada ceritanya konsisten, sejauh manakah ia boleh tahan ujian periksa balas dan sejauh manakah ianya sesuai dengan keterangan dan keadaan kes. Dalam kes semasa, pendekatan tersebut telah pun dipakai oleh hakim bicara dalam penilaian keterangan SP4. Hakim bicara mendapati SP4 H seorang saksi yang boleh percaya selepas membuat penilaian yang maksima atas keterangannya. Keterangan SP4 terhadap apa yang berlaku pada petang tersebut telah diterima oleh hakim bicara sebagai benar walaupun SP4 telah mengaku dia telah berbohong sebelum itu kepada polis. Pandangan hakim I bicara atas kebolehpercayaan SP4 mesti diberi pertimbangan yang wajar. Secara amnya kebenaran atau kepalsuan

keterangan lebih kelihatan kepada hakim yang nampak dan mendengar saksi-saksi berkenaan daripada mahkamah rayuan yang membaca daripada rekod rayuan. A

(3) Ianya tidak luar biasa bagi seorang yang menyaksikan sesuatu jenayah untuk tidak melaporkannya kepada pihak berkuasa dan tidak memberikan identiti penjenayah. SP4 bukan seorang yang telah menyaksikan pembunuhan tersebut. Keterangannya adalah bahawa perayu telah membuat sesuatu pernyataan kepadanya (yang mahkamah bicara mendapati sebagai pengakuan salah). Tiada juga peraturan-peraturan yang sedia ada untuk reaksi yang sepatutnya bagi seorang saksi jenayah. Reaksi dan kelakuan seseorang dalam sesuatu situasi tidak boleh diramalkan. Setiap orang yang menyaksikan sesuatu jenayah serius akan bertindak dengan caranya sendiri (*State of Uttar Pradesh v. Devendra Singh*, dirujuk). B C D

(4) Walaupun SP4 tidak menyaksikan pembunuhan si mati, testimoninya berkenaan apa yang dia nampak apabila dia sampai di rumah, apa yang diberitahu perayu kepadanya apabila dia bertemu dengannya dan kelakuan perayu telah memberikan hakim bicara dengan keterangan penting yang perlu untuk menentukan pembunuh si mati. Jawapan kepada soalan sama ada kematian si mati disebabkan perayu terletak dalam keterangan SP4. E

(5) Pernyataan perayu kepada SP4 yang dia telah melakukan pembunuhan tetapi tidak berniat berbuat demikian adalah keterangan mustahak dalam kes dan adalah penting dalam penentuan kebersalahan perayu. Hakim bicara menerima keterangan pernyataan selepas pertimbangan berhati-hati dan memutuskan pernyataan memberi inferens yang perayu telah melakukan jenayah tersebut. Hakim bicara juga mendapati pernyataan perayu dibuat dengan sukarela dan yakin akan kebenaran pernyataan itu. Maka, hakim bicara betul menerima pernyataan sebagai pengakuan salah. Sebaik sahaja mahkamah puas hati pengakuan salah dibuat dengan sukarela dan dengan kebenarannya, tertuduh boleh disabitkan hanya atas pengakuan salahnya itu. Dalam kes semasa terdapat juga keterangan menyokong dalam bentuk keterangan ikut keadaan. Tidaklah diragukan bahawa perayu memang mengakibatkan kematian si mati. F G H I

(6) Hakim bicara memutuskan bahawa perayu mempunyai niat untuk melakukan pembunuhan berdasarkan testimoni SP9 dan juga berdasarkan kecederaan yang dijumpai atas si mati. Maka, hakim bicara betul memutuskan bahawa pihak pendakwaan telah membuktikan kes *prima facie* pembunuhan terhadap perayu.

(7) Hakim bicara mendapati bahawa keterangan perayu menafikan penglibatannya dalam pembunuhan tersebut dan dalam mengimplikasikan SP4 sebagai alasan yang ditambah kemudian. Hakim bicara dengan wajarnya telah mengambilkira beban pihak pendakwaan dalam membuktikan kesalahan perayu melebihi keraguan munasabah dan beban perayu untuk hanya membangkitkan keraguan munasabah atas kes pihak pendakwaan untuk perayu dibebaskan. Selepas mendapati perayu gagal berbuat demikian, hakim bicara adalah betul dalam mempertuduhkan dan mensabitkan perayu.

Case(s) referred to:
Abdul Rashid v. PP [1994] 1 SLR 119 ***(refd)***
Bhojraj v. Sita Ram AIR [1936] PC 60 ***(refd)***
Herchun Singh & Ors v. PP [1989] 2 MLJ 209 FC ***(refd)***
Juraimi Hussin v. PP [1998] 2 CLJ 383 CA ***(refd)***
Lemanit v. PP [1965] 1 LNS 89 FC ***(refd)***
Osman & Anor v. PP [1967] 1 LNS 117 PC ***(refd)***
PP lwn. KK [2007] 6 CLJ 367 HC ***(refd)***
PP v. Kok Wah Kuan [2007] 6 CLJ 341 FC ***(refd)***
Ryan v. Jarvis [2005] UPKC 27 ***(refd)***
Sathiadas v. PP [1970] 1 LNS 142 HC ***(refd)***
Sinaraju v. PP [1960] 1 LNS 126 HC ***(refd)***
State of Uttar Pradesh v. Devendra Singh AIR [2004] Supreme Court 3690 ***(refd)***
State of UP v. MK Anthony AIR [1985] Supreme Court 48 ***(refd)***
Sucha Singh v. State of Punjab [2003] Cri LJ 3876 ***(refd)***
Yap Sow Keong And Another v. PP [1947] 1 LNS 121 HC ***(refd)***

Legislation referred to:
Evidence Act 1950, s. 17(2)

For the appellant - Richard Ho; M/s Chambers of Richard Ho & Yap
For the respondent - Tuan Awang Armadajaya Awang Mahmud DPP

Reported by Usha Thiagarajah

JUDGMENT

Ahmad Maarop JCA:

[1] The appellant, Ho Sek Kong ("Ho") was charged in the High Court with the murder of his mother, the late Cheah Seaw Meng ("the deceased") between 4pm to 6.30pm on 5 October 2000 at the deceased's house at Block 44-6-11, Taman Naga Emas, Jalan 4/140, Salak Selatan, Brickfields, Kuala Lumpur. Ho was found guilty and sentenced to death. He preferred an appeal to this court.

Brief Facts Of The Case

[2] The substance of the evidence led by the prosecution is as follows. The deceased's house was occupied by the deceased, her son Ho, her adopted son Lee Loy Fatt, her daughter, Ho Kwai Ying (SP3) and her boyfriend, Lee Lai. Wan Kwang Woh (SP4), who was then SP3's boyfriend also stayed over at that house on certain nights and he had the keys to the house. On 5 October 2000, at about 6pm after work, SP4 returned to his house at 103, Kg. Kerayong, Off Jalan Lapangan Terbang Lama Kuala Lumpur. Then he left his house to go to the deceased's house. When he arrived at the deceased's house he found the front door open and the grille to it was closed but not locked. When he went in he saw blood splattered on the wall of the deceased's bedroom. He saw the deceased's body lying on the floor next to the bed in the bedroom. He went near the body to have a look. He saw a lot of blood. He immediately left the room to look for someone. Suddenly he saw Ho coming out of the toilet, clad only in a towel. Ho shouted at him. SP4 was then in the living room. Ho told SP4 not to make noise. Ho asked SP4 to sit. Ho told SP4 that he did it but had not intended to do it (dia yang buat tapi tidak ada niat nak buat). SP4 said he understood what Ho meant. When asked by SP4 why he did it, Ho replied that he had not intended to do it. At that time apart from SP4 and Ho, there was nobody else in the house. Then Ho told SP4 to calm down and not to speak about the incident to his sister – SP3 (OKT beritahu saya supaya jangan beritahu perkara ini kepada adik perempuannya iaitu SP3). Ho then went into his room to put on his clothes. Shortly thereafter, Ho left the house followed by SP4. SP4 asked Ho what should be done? Ho told SP4 not to do anything and to take it that he had not seen anything (OKT

A beritahu saya supaya anggap tidak buat apa-apa dan tidak nampak apa-apa). Then they went into the lift. Nothing was said between them in the lift as there were other people. When they reached the ground, SP4 asked Ho again what to do. Ho told SP4 to leave the place. SP4 went back up into the house to fetch his B helmet. SP4 then left the house after locking up the grille. SP4 returned to his own house at Kg. Kerayong. At his house he telephoned the deceased's house but nobody picked up the phone. He called his brother and searched for his father but failed to get in touch with any of them. He then left his house to fetch C SP3 from her place of work. When SP4 met SP3, he saw SP3 in a state of panic. SP3 told SP4 that Ho had called her and told her that the deceased was covered with a lot of blood. SP4 and SP3 immediately departed for the deceased's house and upon arrival there SP4 saw many people whom he could not recognise.

D

[3] In her evidence SP3 testified that at 5pm that day (5 October 2000), she had called home and spoke to Ho who answered her call. When she asked where the deceased was, Ho told her that the deceased was sleeping. At 7pm on the same day, E SP3 again called home and spoke to Ho. This time Ho told SP3 that the deceased vomited a lot of blood. When SP3 asked what happened, Ho said, "tidak tahu, tidak tahu" and asked SP3 to come home immediately.

F **[4]** The investigation officer (SP12) arrived at the house at about 9.45pm. The forensic pathologist, Dr. Shahrom Abdul Wahid (SP9) who was summoned to the house, arrived at about 12.30am and assisted SP12 in his investigation at the scene. The deceased's body was later removed to the UKM Hospital where G SP9 performed a post-mortem. SP9 found a total of 55 wounds on the body. In his internal examination, SP9 found that there was a fissured fracture about 19cm long, across the left orbital plate, extending down to the floor of the right middle cranial fossa. Facial bones demonstrated fractures as follows:

H 1. Fractured nasal bone.

2. Fractured maxillary alveolus bilaterally.

3. Fractured hard palate.

I 4. Bilateral comminuted mandibular fracture.

SP9 noted subarachnoid haemorrhage, mainly basal and over the right parieto-temporal area. SP9 noted cortical contusions at the right temporal lobe, and the undersurfaces of the frontal lobes bilaterally. The circle of willis was intact.

[5] SP9 certified the cause of death as head injury due to multiple blunt traumas.

Decision

[6] The prosecution's case against Ho rests substantially on the evidence of SP4. There is also the evidence of SP3. However, her evidence is only a part of the circumstantial evidence against Ho. Standing alone her evidence is not sufficient to connect Ho with the murder. Without SP4's evidence there is no *prima facie* case against Ho. So it was not unexpected that before us learned counsel for Ho attacked the evidence of SP4. Learned counsel contended that Ho's conviction was not safe because SP4 was not a credible witness. Learned counsel argued that the learned trial judge erred in accepting SP4's evidence essentially because in his evidence SP4 admitted that he had lied to the police. Learned counsel's argument appeared to be based on the maxim falsus in uno falsus in omnibus (false in one thing, false in everything). We are unable to accept that submission. In this regard, commenting on the maxim, in *Sucha Singh v. State of Punjab* [2003] Cri. LJ 3876, Supreme Court, 3881-3882, the court said:

> The doctrine merely involves the question of weight of evidence which a Court may apply in a given set of circumstances, but it is not what may be called 'a mandatory rule of evidence' ... if a whole body of a testimony were to be rejected, because witness was evidently speaking an untruth in some aspect, it is to be feared that administration of criminal justice would come to a dead stop. Witnesses just cannot help in giving embroidery to a story, however, true in the main. Therefore, it has to be appraised in each case as to what extent the evidence is worthy of acceptance, and merely because in some respects the Court considers the same to be insufficient for placing reliance on the testimony of a witness, it does not necessarily follow as a matter of law that it must be disregarded in all respects as well. The evidence has to be sifted with care. The aforesaid dictum is not a sound rule for the reason that one hardly comes across a witness whose evidence does not contain a grain of untruth or at any rate exaggeration, embroideries or embellishment ... An attempt has to be made to separate grain from the chaff, truth from falsehood.

[7] While appreciating the evidence of a witness, the approach must be whether the evidence of the witness read as a whole appears to have a ring of truth. Once that impression is formed, it is undoubtedly necessary for the court to scrutinise the evidence more particularly keeping in view the deficiencies, drawbacks and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence given by the witness and whether the earlier evaluation of the evidence is shaken as to render it unworthy of belief. (See *State of U.P. v. M.K Anthony*, AIR [1985] Supreme Court 48). The Privy Council has stated that the real tests for either accepting or rejecting the evidence of a witness are how consistent the story is with itself, how it stands the test of cross-examination, and how far it fits in with the rest of the evidence and the circumstances of the case (See *Bhojraj v. Sita Ram* AIR [1936] PC 60). In our judgment, the approach and the tests as aforesaid were applied by the learned trial judge in evaluating SP4's evidence in the present case.

[8] SP4, who initially was arrested as a suspect in this case was cross-examined at length by the learned counsel who represented Ho in the court below. Various challenges and allegation were put to SP4. Amongst others, it was put to him by Ho's counsel that he was released by the police to be the prime prosecution witness to testify that Ho committed the offence, and that he (SP4) lied so well in giving his statement to the police that he was freed and the accused was charged. SP4 denied the suggestion. It was put to SP4 that he lied to the police when he told the latter that he did not commit the murder. SP4 denied the allegation. Then, following that denial by SP4, a rather tricky challenge was put to him. It was put to him that when he told the police that he committed the murder it was a lie. SP4 denied the allegation. It was put to SP4 that Ho did not tell him that he (Ho) caused the deceased's death but not with the intention of killing her. SP4 disagreed with the suggestion. It was put to SP4 that Ho did not come out of the toilet clad only in a towel. SP4 disagreed with the suggestion. It was put to SP4 that Ho did not at any time tell him not to inform SP3 about the murder. SP4 disagreed with the suggestion. Questioned on the reason why he lied to the investigation officer when he gave his statement, SP4 said he wanted to help his friend (Ho). SP4 said at that time he did not know what to do.

[9] Upon making maximum evaluation of his evidence, the learned trial judge found SP4 to be a credible witness whose evidence about the events on the evening in question was accepted by him as the truth inspite of SP4's admission of having previously lied to the police. This is what the learned judge said:

> SP4 was also initially arrested as a suspect in this murder case. He admitted in court that he had lied to the police about the killing in order to protect the accused, and that the version he related to the court was truly what had transpired. SP4 was however not cross examined on what specifically his lie was to the police. This court's assessment on SP4 was that he was truthful in his answers particularly under cross examination, and I found him to be a credible witness inspite of his admission that he had previously lied to the police. As such his narration of the events on that fateful evening, in particular on what the accused said and the conduct of the accused was accepted by this Court as the truth.

[10] In our view the learned trial judge was entitled to arrive at the aforesaid finding. We find no reason to disagree with him. The view of the learned trial judge as to the credibility of SP4 must be given proper weight and consideration (See *Herchun Singh & Ors v. PP* [1969] 1 LNS 52). Indeed, the true or false note is generally more audible to the judge who hears and sees the witnesses than to the appellate court reading the record (per Lord Hoffman in *Ryan v. Jarvis* [2005] UPKC 27). We also have not lost sight of the learned counsel's argument that the reason given by SP4 as to why he lied previously to the investigation officer (ie that he wanted to protect Ho) was inherently improbable because according to the learned counsel it was not natural for someone who had witnessed a crime not to report it to the authority, and instead withhold the identity of the perpetrator. We cannot accept that submission. First, it must be made clear that SP4 was not "someone who had witnessed" the murder. His evidence was that Ho made certain statement to him which the court below later held to be a confession. It would have been better for SP4 to disclose the statement to the police earlier and/or relate to SP3 at the first available opportunity what Ho told him. It is also easy to say that SP4 should have done this and that, or that he should not have done this and that. But then there is no set rules of natural reaction. This was clearly explained in the *State of Uttar Pradesh v. Devendra Singh*, AIR [2004] Supreme Court 3690 at p. 3692:

> Human behaviour varies from person to person. Different people behave and react differently in different situations. Human behaviour depends upon the facts and circumstances of each given case. How a person would react and behave in a particular situation can never be predicted. Every person who witnesses a serious crime reacts in his own way. Some are stunned, become speechless and stand rooted to the spot. Some become hysteric and start wailing. Some start shouting for help. Others run away to keep themselves as far removed from the spot as possible. Yet others rush to the rescue of the victim, even going to the extent of counter-attacking the assailants. Some may remain tight lipped overawed either on account of the antecedents of the assailant or threats given by him. Each one reacts in his special way even in similar circumstances, leave alone, the varying nature depending upon variety of circumstances. There is no set rule of natural reaction. To discard the evidence of a witness on the ground that he did not react in any particular manner is to appreciate evidence in a wholly unrealistic and unimaginative way.

[11] Having considered SP4's evidence in the appeal record ourselves and the reasons given by the learned trial judge, we find no reason to disagree with him.

[12] Although SP4 did not witness the killing of the deceased, his testimony of what he saw when he arrived at the house at about 7pm on 5 October 2010, what Ho told him when he met Ho in the house, as well as Ho's conduct provided the learned trial judge with the crucial evidence necessary in the determination of the question – who caused the deceased's death? Of course we must add that it was not disputed, and indeed on the available evidence the fact of the deceased's death had been proven beyond reasonable doubt. The question is whether the deceased's death was caused by Ho? The answer lies in SP4's evidence.

[13] To reiterate the material part of SP4's evidence, when he arrived at the deceased's house, he found the front door open and the grill to it closed but not locked. When he went in he saw blood splattered on the wall of the deceased's bedroom. He saw the deceased's body lying on the floor next to the bed in the bedroom. He went near the body to have a look. He saw a lot of blood. He immediately left the room to look for someone. Suddenly he saw Ho coming out of the toilet, clad only in a towel. Ho shouted at him. SP4 was then in the living room. Ho told SP4 not to make noise. Ho asked SP4 to sit. Ho told SP4 that

he did it but had not intended to do it (dia yang buat tapi tidak ada niat nak buat). SP4 said he understood what Ho meant. When asked by SP4 why he did it, Ho replied that he had not intended to do it. At that time apart from SP4 and Ho there was nobody else in the house. Then Ho told SP4 to calm down and not to speak about the incident to his sister – SP3 (OKT beritahu saya supaya jangan beritahu perkara ini kepada adik perempuannya iaitu SP3). Ho then went into his room to put on his clothes. Shortly thereafter, Ho left the house followed by SP4. SP4 asked Ho what should be done? Ho told SP4 not to do anything and to take it that he had not seen anything (OKT beritahu saya supaya anggap tidak buat apa-apa dan tidak nampak apa-apa). Then they went into the lift. Nothing was said between them in the lift as there were other people. When they reached the ground, SP4 asked Ho again what to do. Ho told SP4 to leave the place. SP4 went back up into the house to fetch his helmet. SP4 then left the house after locking up the grille. SP4 returned to his own house at Kg. Kerayong.

[14] Ho's statement to SP4 that he did it but had not intended to do it (dia yang buat tapi tak ada niat nak buat) is a very important piece of evidence in this case and was pivotal in the determination of the guilt or innocence of Ho. Upon careful consideration of that evidence, the learned trial judge accepted it and held that that statement made by Ho to SP4 suggested an inference that he (Ho) had committed the offence with which he stood charged. The learned trial judge also found that Ho made the statement voluntarily. The learned trial judge therefore admitted (and in our view rightly) that statement as a confession under s. 17(2) of the Evidence Act 1950. In this regard, in *PP lwn. KK* [2007] 6 CLJ 367 (affirmed by the Federal Court in *PP v. Kok Wah Kuan* [2007] 6 CLJ 341), the accused child's statement (by telephone) to his tuition teacher "sorry teacher, teacher sorry, sorry teacher, I don't know why I did it" was held to be a confession under s. 17(2) of the Evidence Act 1950. Learned counsel for Ho contended that the learned trial judge erred in arriving at the said conclusion in that he failed to consider the following surrounding circumstances:

(i) SP4 was also a suspect in the case and was remanded for 14 days;

(ii) In his evidence under cross-examination SP4 said, "pada mulanya saya ingin tolong orang. Masa itu saya tak tahu apa nak buat. Semasa dalam tahanan beberapa orang yang direman diminta polis bertanyakan saya. Saya beritahu orang dalam reman itu dan saya tak sangka mereka beritahu perkara itu kepada pihak polis";

(iii) SP4 was an interested witness;

(iv) SP4 was not a credible witness.

[15] With respect we cannot accept that contention. First, regarding surrounding circumstance no (ii), we must say at once that it is not clear, and there is no evidence as to what SP4 told the remand prisoners. We do not see how this evidence is relevant to the question whether what Ho told SP4 was a confession or not. The second and more important matter is that the surrounding circumstances pointed out by the learned counsel, although relevant to the question whether SP4 was a credible witness, was not relevant to and could not be considered in the determination of the question whether Ho's statement to SP4 was a confession under s. 17(2) of the Evidence Act (See *Lemanit v. PP* [1965] 1 LNS 89, FC, which was relied upon by the learned trial judge in this case). Similar view was expressed by the Singapore Court of Criminal Appeal in *Abdul Rashid v. PP* [1994] 1 SLR 119, at p. 129:

> The test whether a statement is a confession is an objective one, whether to the mind of a reasonable person reading the statement at the time and in the circumstance in which it was made it can be said to amount to a statement that the accused committed the offence or which suggested the inference that he committed the offence. **The statement must be looked at as a whole and it must be considered on its own terms without reference to extrinsic facts.**
>
> ... The appropriate test in deciding whether a particular statement is a confession is whether the words of admission in the context expressly or substantially admit guilt or do they taken together in the context inferentially admit guilt? ... We need only add that, for a statement to amount to a confession, it need not be of a plenary or unqualified nature and can also be of a non-plenary nature, so long as the statement connects the accused in some way with the offence. (emphasis added).

[16] We therefore hold that the learned judge was right in admitting Ho's statement as a confession. The learned trial judge was satisfied that the confession was voluntarily made by Ho. It appeared to us that the learned judge was also convinced of the truth of the confession. Indeed, he said, (at pp. 105-106 of the appeal record):

> The confession was made, in my view, under a feeling of sheer remorse and manifested an acknowledgment that he had committed the act against the deceased.

[17] It is settled law that in this country (unlike in India) once the court is satisfied that the confession is voluntarily made and that it is true, the accused may be convicted solely on the strength of his confession (See *Sinaraju v. PP* [1960] 1 LNS 126, *Sathiadas v. PP* [1970] 1 LNS 142, *Yap Siow Keong And Another v. PP* [1947] 1 LNS 121, *Osman & Anor v. PP* [1967] 1 LNS 117, *Juraimi b. Hussin v. PP* [1998] 2 CLJ 383, *PP lwn. KK* [2007] 6 CLJ 367. In *Juraimi b. Hussin v. PP* [1998] 2 CLJ 383 at p. 409, Gopal Sri Ram HMR (as he then was) speaking for this court said:

> *Lastly, we accept as settled law that once a confession is admitted in evidence an accused may be convicted solely on its strength. However, as a matter of prudence and practice, the court ought to look for corroboration of the incriminating parts of the confession.* See *Public Prosecutor v. Lai Pong Yuen & Ors.* [1968] 1 MLJ 12; *Public Prosecutor v. Chong Boo See* [1988] 3 MLJ 292; *Hasibullah bin Mohd Ghazali v. Public Prosecutor* [1993] 3 MLJ 321. *For our part we regard the requirement of corroboration merely as another way of saying that a confession must not only be voluntary but also true.* See *Abu bin Husin v. Public Prosecutor* [1959] MLJ 5. For, truth is surely established by the presence of independent evidence that corroborates the incriminating parts of a confession. (emphasis added).

So, the requirement of corroboration stated by this court in the above passage was actually another way of saying that the confession must not only be voluntary but must also be true – the very principle established in *Yap Sow Keong, Sathiadas and Osman v. PP*. Be that as it may in the instant case, the learned trial judge found (and in our view right rightly) that there were corroboration to the confession in the form of circumstantial evidence. This is what the learned trial judge said:

A Besides the confession of the accused, there were also circumstantial evidence, which if considered together with that confession point irresistibly to the guilt of the accused in perpetrating this murder.

B The accused was proved to be alone and the last person together with the deceased in the house. This fact was not in dispute since in his own evidence the accused had stated that he was at home the whole day long and when he left the house at 6pm that fateful evening his mother was well and alive in the house. SP3 in her evidence had also stated that she called home at 5pm and the C accused informed her that their mother was then sleeping.

According to the commentary in *Ratanlal & Dhirajlal's Law of Crimes* (page 1425) "the fact that the accused and the deceased were 'last seen together' is a circumstance of an incriminating nature against the accused – But the mere fact that the accused D was last seen together with the deceased does not necessarily lead to the irresistible inference that he had committed the crime." It cannot therefore be the sole basis for a conviction. However, taken together with his own confession, the Court may make a inference of his guilt. (*State v. Shaik Mazhar* (AIR) [2001] SC 2427).

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There were other circumstances found in the narration of the prosecution's case which brought this Court, by irresistible inference, that it was the accused who murdered his mother. When SP4 arrived at the house he saw the accused coming out F of the bathroom clad only in a towel. The accused had shouted to SP4 not to make any noise. It may also be pertinent to note that at about 5 to 6pm, SP2, the neighbour, had heard noises from the accused's house, although it was not explained what the noises were. Later, when they both left the house the accused told SP4 not to do anything and pretend that SP4 had not seen G anything. This peculiar conduct of the accused immediately after the recovery of the deceased lying in a pool of blood is most peculiar and suspicious to say the least. I had taken this as one of the circumstantial evidence, which taken together with the other facts and circumstances have the cumulative effect of bringing H home the reasonable and irresistible inference that the accused had committed the murder.

[18] Thus on the evidence available there is no doubt in our mind that Ho caused the death of his mother.

I **[19]** On the question of intention, the learned trial judge considered the evidence of SP9 and found as follows:

Dr. Shahrom Abdul Wahid (SP9), a forensic expert at the Pathology Department, UKM, undertook a post mortem examination on the deceased on the morning of 6.10.2000. He found 55 wounds consisting of abrasions and lacerations of various degrees on the dead body. There were also defence wounds on the forearms. The injuries were a result of blows to the body using a blunt object. The injuries to the deceased's head were fatal and SP9 opined that those injuries were consistent with a homicidal attack. The cause of death was determined as "head injury due to multiple blunt trauma". SP9 also visited the scene of the crime when the deceased's body was still there. He saw the blood stains on the floor, walls and the bed. He found the deceased head to be in a big pool of blood suggesting that the deceased had been beaten several times on the head and that the injuries to the head were serious. SP9 also testified that the blood stains on the walls were that of spatters and sprays, the latter being the result of incised wounds with a sharp object. The estimated time of death was between 4pm till 9 pm on 5.10.2000. This Court accepted the opinion of SP9 and concluded that the deceased was brutally attacked with a blunt instrument, and succumbed to her wounds, notably those to her head.

Looking at the wounds from the post mortem photographs (P4) and after considering SP9's testimony this Court found that the accused had intended to cause his mother's death when he inflicted those injuries upon her. His act fell within sub-sections (b), (c) and (d) of s. 300 of the Penal Code which states:

> Culpable homicide is murder:
>
> (b) if it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused;
>
> (c) if it is done with the intention of causing bodily injury to any person, and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death; or
>
> (d) if the person committing the act knows that it is so imminently dangerous that it must in all probability cause death, and commits such act without any excuse for incurring the risk of causing death, or such injury as aforesaid.

[20] We agree with the learned trial judge's conclusion. The learned trial judge was therefore right when he held that the prosecution had proven a *prima facie* case of murder against Ho.

[21] When his defence was called, Ho chose to give evidence on oath. He denied killing or harming the deceased. The substance of his evidence is as follows. On 5 October 2000 he was in the house from 9am to 6pm. According to Ho, the deceased was also in the house between 5.30pm to 6pm. Ho said at 6pm he left the house, and at that time the deceased was alive and well. Ho claimed that before he left the house, he saw SP4 in the house, and that when he (Ho) left the house at 6pm, SP4 was in the house with the deceased. Ho said when he returned to the house at 7.45pm, he found the deceased lying in a pool of blood on the bedroom floor – dead. Ho claimed when he returned to the house at that time, SP4 was no longer in the house. Ho said that he saw SP4 again later when SP4 returned to the house with SP3.

[22] Thus, apart from denying his involvement with the murder, the other important element in his evidence was his attempt to indirectly implicate SP4 in the murder when he testified to the effect that when he left the house at 6pm, SP4 was in the house with the deceased (who was then alive and well), and that when he returned home at 7.45pm the deceased was dead and SP4 was no longer to be found in the house. This is a very important element in his evidence. If it was true there was no reason why he should have overlooked it and not put it to SP4 when the latter was being cross-examined. The learned trial judge found (and in our view rightly), that evidence to be an afterthought. Nevertheless, having properly directed himself that the burden of proving Ho's guilt beyond reasonable doubt lay throughout on the prosecution, and that all Ho needed to do to be entitled to an acquittal was to raise a reasonable doubt in the prosecution's case, the learned trial judge carefully considered Ho's evidence in the light of all the evidence available before the court. In the end the learned judge found Ho failed to raise any reasonable doubt in the prosecution's case. He therefore concluded that the prosecution had proved the case against Ho beyond reasonable doubt and found Ho guilty as charged and convicted him.

[23] We have carefully scrutinised the evidence on record ourselves and examined the judgement of the learned trial judge. We are satisfied that Ho's conviction is safe. In the result Ho's appeal is dismissed. The conviction and sentence on Ho are affirmed.